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(Slip Opinion)

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In the Matter of:)	
)	
Bethlehem Steel Corporation)	
)	TSCA Appeal No. 92-1
Respondent)	
)	
Docket No. TSCA-III-322)	
_____)	

[Decided May 12, 1992]

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Timothy J. Dowling (Acting).

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BETHLEHEM STEEL CORPORATION

TSCA Appeal No. 92-1

FINAL DECISION

Decided May 12, 1992

Syllabus

The Environmental Protection Agency filed an administrative complaint against Bethlehem Steel Corporation for the assessment of administrative penalties under §16(a) of the Toxic Substances Control Act, 15 U.S.C. §2615(a). On December 23, 1991, Administrative Law Judge J. F. Greene granted Bethlehem Steel's motion to dismiss the complaint as barred by the general statute of limitations at 28 U.S.C. §2462.

Held: In light of the recent decision in *3M Company (Minnesota Mining and Manufacturing)*, TSCA Appeal No. 90-3 (CJO, February 28, 1992), holding that the five-year statute of limitations in 28 U.S.C. §2462 does not apply to the assessment of administrative penalties under TSCA, the Environmental Appeals Board reverses Judge Greene's December 23, 1991 Order Granting Motion to Dismiss and reinstates the complaint.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Timothy J. Dowling (Acting).

Per curiam:

This is an action for the assessment of administrative penalties under §16(a) of the Toxic Substances Control Act, 15 U.S.C. §2615(a). EPA Region III filed a complaint against Respondent Bethlehem Steel Corporation, alleging that Bethlehem Steel had filed a false report in violation of TSCA Section 15(3), which provides, *inter alia*, that it shall be unlawful for any person

to fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this chapter or a rule thereunder.

15 U.S.C. §2614(3). In its answer to the complaint, Respondent argued that the complaint is barred by the general statute of limitations at 28 U.S.C. §2462, because it was filed more than five years after the date upon which the erroneous report was submitted. Respondent also filed a motion to dismiss the complaint on

the same ground. Administrative Law Judge J.F. Greene ("Presiding Officer") agreed that the complaint is barred by the statute of limitations at 28 U.S.C. §2462, and on December 23, 1991, she issued an Order Granting Motion to Dismiss. The Region appealed.

In light of the recent decision in *3M Company (Minnesota Mining and Manufacturing)*, TSCA Appeal No. 90-3 (February 28, 1992), holding that the five-year statute of limitations in 28 U.S.C. §2462 does not apply to the assessment of administrative penalties under TSCA, we reverse the Presiding Officer's December 23, 1991 Order Granting Motion to Dismiss and reinstate the complaint. Accordingly, we remand this case for further proceedings.¹

So ordered.²

¹ The Region's appeal brief also raised the issue of whether the statute of limitations at 28 U.S.C. §2462 begins to run before a continuing violation of TSCA sections 8(A) and 15(3), 15 U.S.C. §§2607(A) and 2614(3), has abated. Because we have concluded that the statute of limitations at 28 U.S.C. §2462 does not apply to TSCA administrative penalty proceedings, it is not necessary to address this issue.

The Region has filed a Motion for Leave to File a Response to Bethlehem Steel's reply to the Region's appeal brief. The motion is accompanied by the response brief the Region wants to file. Bethlehem Steel in turn has filed a Partial Opposition to Motion for Leave to File Response to Reply Brief. The Board believes that the Region's appeal brief and Bethlehem Steel's reply to the appeal brief adequately address the issue of whether the statute of limitations at 28 U.S.C. §2462 applies to TSCA administrative penalty proceedings. Accordingly, the Board has not considered the Region's response brief, and the Region's motion for leave to file it is denied. Bethlehem Steel's opposition brief also was not considered.

² The Environmental Appeals Board, as the Administrator's delegatee, has authority to decide appeals of initial decisions in TSCA penalty cases. *See* 57 Fed. Reg. 5324-26 (Feb. 13, 1992) (revising 40 CFR §§22.04(a) & 22.30 to reflect the role of the Environmental Appeals Board as the final decisionmaker in appeals of initial decisions under Part 22).